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SW

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,800	12/28/2001	William J. Black	02105.002110	3104
5514	7590	12/30/2003	EXAMINER	
FITZPATRICK CELLA HARPER & SCINTO 30 ROCKEFELLER PLAZA NEW YORK, NY 10112			TRAN, KHOI H	
			ART UNIT	PAPER NUMBER
			3651	
DATE MAILED: 12/30/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

**Office Action Summary**

Application No.

10/028,800

Applicant(s)

BLACK ET AL.

Examiner

Khoi H Tran

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 November 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-43 is/are pending in the application.
- 4a) Of the above claim(s) 22-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**KHOI H. TRAN**  
**PRIMARY EXAMINER**

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 22-35 will remain withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species (plurality of dispensers having a processor and a central station). The Examiner remains of the position that the inventions as defined in the previous restriction requirement comprise distinct and independent inventions as discussed in the restriction requirement. The requirement is still deemed proper and hereby made Final.

Applicant argued that claims 22-35 read on the elected species (Species I, Figure 2) because the claims are only directed to the plurality of dispensers, and not on the type of dispenser. This argument is not persuasive. Species I and II are directed to two different embodiments involving two different dispensing systems, emphasis added. Accordingly, claims 22-35 are directed to the dispensing system according to Figure 4. This non-elected system involves different type of control and monitoring set ups for a plurality of dispensers.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-4, 6-10, 13 -16, and 18-21 are rejected under 35 U.S.C. 102(e) as being anticipated by Newman et al. 6,364,159.

Newman '159 discloses a beverage dispensing system per claimed invention. The system comprises a dispenser 16 for forming and dispensing a beverage. Said beverage dispenser operating under various parameters including a first parameter that is indicative of the quality of the beverage to be dispensed (range of voltage drop across sensed valves 24, 30, and 48) and a second parameter that is indicative as to when routine maintenance (i.e. due to component fatigue or the malfunctioning of the sensors within the carbonator tank) is to be scheduled (column 7, lines 20-43 and column 8, lines 47-63). The system comprises an integrated processor 100 for monitoring the various parameters under which said beverage dispenser operates. Said processor determines whether the first parameter is outside of a predetermined range. If the first parameter is outside the predetermined range, said processor sends a signal regarding a request for immediate repair service to a central processing station located remotely from the dispenser.

In regards to claim 3, Newman's processor constantly monitors the first parameter and periodically (upon each powering-up procedure) monitors the second parameter.

In regards to claim 4, Newman's system comprises a carbonator tank 20 in which water is mixed with CO<sub>2</sub> gas to form carbonated water and said processor monitors the water flow rate.

In regards to claim 6, Newman's system comprises comprising a central processing station 94 remote from said beverage dispenser and communicating with said processor 100 (Figure 1, column 6, lines 35-54).

In regards to claim 13, Newman's processor 100 controls the components of said beverage dispenser based on monitored parameters.

In regards to the method claims 14-16 and 18-21, the operation of Newman's system anticipates all claimed method steps.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newman et al. 6,354,159.

In regards to claim 11, Newman '159 discloses all elements per claimed invention as explained in paragraph 3 above. However, it is silent as to the specifics of

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the processor 100 being located remotely from the dispenser. Nevertheless, Newman's Figure 1 shows the controller 100 being separately represented from the dashed line box 16 (the dispenser housing). Therefore it is obvious that said controller 100 could be interpreted as being remotely located from the dispenser.

In regards to claim 12, Newman '159 discloses all elements per claimed invention as explained in paragraph 3 above. However, it is silent as to the specifics of the processor being programmable so that the first and second parameters can be changed. Nevertheless, since Newman's controller (CPU 100) is interpreted as a computer containing embedded software for monitoring and controlling the local operations of the dispensing system, it is obvious that said controller is programmable so that any of the parameters contained therein can be changed.

Claims 5 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Newman et al. 6,354,159 in view of Kazuma 5,681,507.

Newman '159 discloses all elements per claimed invention as explained in paragraph 3 above. However, it is silent as to the specifics of a pump for pumping water into carbonator tank 20.

Kazuma '507 discloses a system for producing carbonated water. Kazuma teaches that pump 6 is required for pumping water into a pressurized carbonated water mixing tank.

It would have been obvious for a person with ordinary skill in the art, at the time the invention was made, to have provided to Newman 's carbonated water producing system with a pump for pumping water to the pressurized carbonated tank 20 because

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it provides a positive flow of water into a pressurized tank. It is obvious that the flow rate from either valve 34 or 24 can be used to monitor pump flow rate.

***Response to Arguments***

6. Applicant's arguments filed on 11/05/2003 have been fully considered but they are not persuasive.

In response to the 35 USC 102 rejections, Applicant argued that Newman et al. 6,364,159 provides "... no disclosure of notifying when there is a deviation of the water flow rate." and that "The water flow rate in Newman et al. cannot be considered as a first parameter that is monitored and then notified." This argument is not persuasive. Applicant's attention is directed to Newman et al. '159, column, 2, lines 5-11. Newman '159 is directed to a self-monitoring, intelligent fountain dispenser. Newman '159 system monitors the quality of the dispensing beverage via plurality of sensed conditions, i.e. water flow rate. Newman '159 monitoring system intelligently recognizes the development of performance problems via said sensed conditions and, in turn, provides notification of such problems, emphasis added. Therefore, Newman et al. '159 does anticipate the claimed invention as previously indicated.

In response to the 35 USC 103 rejections, Applicant has failed to provide any just reasons as to why Kazuma 5,681,507 is not believed to be the remedy for the deficiencies of Newman et al. '159. Subsequently, the rejections under 35 USC 103 remains.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Khoi H Tran whose telephone number is (703) 308-1113. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis can be reached on (703) 308-1113. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.



Khoi H Tran  
Primary Examiner  
Art Unit 3651